

May 12, 2008

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E07G0296 & E0500006**

GLENN & STACY SEARS
Code Enforcement Appeal

Location: 19212 Southeast 209th Place

Appellant: **Glenn & Stacy Sears**
PO Box 1293
Maple Valley, Washington 98038
Telephone: (425) 413-1746

King County: Department of Development and Environmental Services
represented by **Holly Sawin**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-6772
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal with revised compliance schedule
Department's Final Recommendation:	Deny appeal with revised compliance schedule
Examiner's Decision:	Deny appeal with further revised compliance schedule

EXAMINER PROCEEDINGS:

Hearing opened:	February 5, 2008
Hearing closed:	February 5, 2008

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On November 30, 2007, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Appellants Glenn and Stacy Sears that found two code violations on a Rural Area-5 (RA-5) property located at 19212 Southeast 209th Place in the unincorporated area near Maple Valley. The Notice and Order cited the Sears and the property with the following violations of County code:
 - A. Construction of a (detached) garage and (a detached) accessory dwelling unit (ADU) without required permits, inspections and approvals.
 - B. Placement of fill, gravel and culverts within wetland areas and/or associated buffers.
2. The Sears filed a timely appeal of the Notice and Order, making the following claims:
 - A. The Appellants do not contest the fundamental conclusions of violation by the Notice and Order, but request additional time to perform their intended demolition of the non-permitted ADU and other compliance actions.
 - B. The Appellants request a 30-day extension for obtainment of the necessary permits (building permit for the detached garage, clearing/grading permit for the clearing/grading work and demolition permit for the ADU), and a 120-day extension for removal of the ADU beyond the January 3, 2008 deadline imposed by the Notice and Order.
 - C. A wetland delineation report necessary for a required clearing/grading permit (for restoration of the subject clearing/grading activity) has been in the works by a wetland consultant, but had not been completed by the time of the appeal (it has since been completed and received by DDES), and is requested to not be required for clearing/grading permit review.
3. The Appellants' request to forego the need for the wetland delineation in seeking the clearing/grading permit is moot, since the delineation has now been submitted to DDES and available for review during the clearing/grading permit review.
4. DDES notes that the ADU lies in an area of wetlands and/or wetland buffers and that because of such location, the clearing/grading permit review and grading restoration work should be conducted coincidentally with removal of the ADU. DDES also indicates that the Appellants have the option to seek a building permit for the ADU, but notes that Health Department approval is required and also indicates that if a building permit is denied, a demolition permit is required and demolition and removal necessary.
5. Regardless whether the Appellants choose to seek a building permit for the ADU or proceed immediately toward demolition, due to the proximity of the ADU to wetlands and/or wetland buffers, and the need for restoration of clearing/grading work that has occurred in such areas, care must be taken to coordinate such activities and to conduct them in a seasonally appropriate time given the greater potential for environmental damage during wet conditions.

6. Given spring's late onset in the region this year, postponement of the work to the late spring and summer is appropriate and thus new timelines shall be established for conduct of the work.

CONCLUSIONS:

1. Given the Appellants' essential stipulation to the violations cited in the Notice and Order and the limitation of their appeal to a request for deadline revisions, the conclusions of violation in the Notice and Order are sustained.
2. Accordingly, the compliance schedule shall be revised to allow a sufficient time for permit applications and performance of the necessary grading work restoration, and demolition of the ADU if that alternative is the one chosen by the Appellants or eventuates from denial of a requested building permit for the ADU. (The Examiner should note that all statements herein regarding the option of seeking a building permit for the ADU should not be construed as an indication that the permit is readily obtainable. As DDES has noted, the permit may be subject to denial, in which case the ADU would need to be demolished in any case.)
3. The clearing/grading permit and ADU demolition and/or building permit should be coordinated in the application and review process given the relationship of the two to wetlands and/or wetland buffers and the need to conduct a) restoration of the past grading disturbance, and b) possible further construction or demolition of the ADU and removal of the demolition debris from the site.

DECISION:

The appeal is DENIED and the Notice and Order sustained, except that the compliance schedule and requirements shall be revised as stated in the following Order.

ORDER:

1. If they choose to seek a building permit for the ADU, the Appellants shall submit a written statement to DDES to that effect *by no later than **June 30, 2008***, and shall concurrently file with the Health Department any application necessary for Health approval of the required building permit for such structure. Once Health Department approval is granted, or is determined not to be necessary, a building permit application shall be submitted to DDES *no later than **30 days after such approval/determination***. Thereafter, all pertinent timeframes and stated deadlines for additional information, response comments, supplementary submittals, etc., shall be diligently observed by the Appellants through to permit issuance, final inspections and approvals. Alternatively, if the Appellants decide not to pursue building permit obtainment for the ADU on the property, and/or fail to submit the above-noted statement of intent to DDES by the above-required date, said ADU which has been placed on the subject property without required permits shall be demolished and the demolition debris removed from the property *by no later than **August 15, 2008***. A demolition permit may be required; the Appellants should consult with DDES as to any such requirements. If the either the sought Health approval or building permit for the ADU is denied, the ADU shall be demolished and the demolition debris removed from the property *by no later than **45 days** after such denial, or **August 15, 2008***, whichever is later. DDES is authorized to grant deadline extensions for such activities of warranted by seasonal concerns about respect to potential critical area damage.

2. *By no later than **June 16, 2008***, the Appellants shall submit an application for a clearing/grading permit for the subject clearing/grading work. Thereafter, all pertinent timeframes and stated deadlines for additional information, response comments, supplementary submittals, etc., shall be diligently observed by the Appellants through to permit issuance, final inspections and approvals. The clearing/grading permit review and any field work performed pursuant to the requirements of said permit shall be coordinated with any permit work and/or demolition work conducted with respect to the above-noted ADU, so that earth disturbance may be minimized and performed most efficiently in any restoration with the minimum of environmental damage.
3. *By no later than **June 16, 2008***, the Appellants shall submit a complete building permit application for the detached garage as necessary to reinstate building permit B06N0386 or to initiate a new permit. Thereafter, all pertinent timeframes and stated deadlines for additional information, response comments, supplementary submittals, etc., shall be diligently observed by the Appellants through to permit issuance, final inspections and approvals. All work required/performed under such permit shall be completed with final inspection and approval granted within **six months from the date of building permit issuance**.
4. No penalties shall be assessed by DDES against the Sears and/or the property if the above compliance requirements and deadlines are complied with in full. If they are not, DDES may assess penalties against the Sears and/or the property retroactive to the date of this order as provided by County code.

ORDERED May 12, 2008.

Peter T. Donahue
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding Code Enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE FEBRUARY 5, 2008, PUBLIC HEARING ON DEPARTMENT OF
DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E07G0296 & E0500006.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin representing the Department and Glenn Sears the Appellant.

The following Exhibits were offered and entered into the record:

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| Exhibit No. 1 | DDES staff report to the Hearing Examiner for E07G0296 & E0500006 |
| Exhibit No. 2 | Copy of the Notice & Order issued November 30, 2007 |
| Exhibit No. 3 | Copy of the Notice and Statement of Appeal received December 14, 2007 |
| Exhibit No. 4 | Copies of codes cited in the Notice & Order |

- Exhibit No. 5A Photographs of subject property taken by Holly Sawin July 2005 and April 2007
- Exhibit No. 5B Aerial photograph of subject property depicting long range views of photographs in 5A
- Exhibit No. 6 Letter to Glenn Sears from Scott Spooner, Senior Ecologist, DDES, regarding building
permit application B06M0386 dated May 12, 2006
- Exhibit No. 7 Letter to Glenn Sears from John Altmann, Ecologist, Altmann, Oliver Associates,
regarding wetland areas of subject property

PTD:vsm

E07G0296 & E0500006 RPT